

**New York Lawyers'
Practical Skills Series**

Social Security Law and Practice

Daniel S. Jones, Esq.
Charles E. Binder, Esq.

2019–2020

NEW YORK STATE BAR ASSOCIATION



New York State Bar Association publications are intended to provide current and accurate information to help attorneys maintain their professional competence. Publications are distributed with the understanding that NYSBA does not render any legal, accounting or other professional service. Attorneys using publications or orally conveyed information in dealing with a specific client's or their own legal matters should also research original sources of authority.

We consider the publication of any NYSBA practice book as the beginning of a dialogue with our readers. Periodic updates to this book will give us the opportunity to incorporate your suggestions regarding additions or corrections. Please send your comments to: Publications Director, New York State Bar Association, One Elk Street, Albany, NY 12207.

Copyright 2019
New York State Bar Association
All rights reserved
ISBN: 978-1-57969-573-6
Product Number: 422920

CONTENTS

I.	Introduction and Background	1
II.	Statutes, Regulations, and Other Legal Authorities	2
III.	Claims Practice	3
	A. Sequential Analysis of Disability	3
	1. Step One: Substantial Gainful Activity	4
	2. Step Two: Severe Impairments.....	4
	3. Step Three: Listing of Impairments.....	5
	4. Residual Functional Capacity	6
	5. Step Four: Past Relevant Work	6
	6. Step Five: Ability to Do Any Other Work	7
	B. The Client	8
	C. The Claim	10
	D. The Claim File.....	11
	E. Medical Reports.....	12
	F. Submission of Evidence	17
	G. The Earnings Record	19
	H. The Hearing.....	19
	I. Conduct of the Hearing	21
	J. The Appeals Council	22
	K. Civil Actions in Federal District Court	23
	1. Jurisdictional Requirements	23
	2. Filing and Serving a Complaint and District Court Admission.....	25
	3. Motion Practice and Briefing	26
	4. Appeals to Circuit Court.....	29
	5. Commonly Litigated Issues	30
	a. Weighing Medical Opinions.....	30
	b. Claimant’s Subjective Statements	30
	c. Determining a Claimant’s Residual Functional Capacity	31
	d. Step Five/Vocational Expert Issues.....	32
	e. Non-Severe Impairments.....	33
	f. Medical Listings	34
	L. Limitations of Time.....	34
IV.	Background Substantive Guide	36
	A. Basic Eligibility	36
	B. Retirement Benefits.....	36
	1. Full Retirement Age	36
	2. Early Retirement Age	36
	C. Survivors’ Benefits.....	36
	D. Disability Insurance Benefits	37
	1. Disabled Surviving Spouse.....	38
	2. Disabled Adult Children.....	38
	3. Trial Work Period.....	38
	4. Cessations	39
	E. Overpayments and Underpayments.....	39

F.	Supplemental Security Income Benefits	40
IV.	Attorney Fees.....	41
A.	Fees Following an Award of Past Due Benefits.....	41
B.	Equal Access to Justice Act Fees (EAJA) for Adversarial Litigation.....	45
	Social Security Forms Index.....	53
	Table of Authorities	275
	About the Authors.....	283

CHARLES E. BINDER, ESQ.

Mr. Binder, of the Law Offices of Charles E. Binder and Harry J. Binder, LLP, works almost exclusively on Social Security disability cases at both the administrative and federal court levels. A graduate of Georgetown University Law School, Mr. Binder was an officer and member of the Executive Committee of the National Organization of Social Security Claimants' Representatives (NOSSCR) for many years, as well as a past president of the New York Social Security Bar Association. He has regularly lectured on behalf of the New York State Bar Association for its Continuing Legal Education programs covering Social Security disability, as well as at many NOSSCR conventions, conferences on Social Security disability organized by the Practising Law Institute, before hospital staffs, vocational rehabilitation specialists and various foundations dealing with the problems of the elderly and disabled. He has twice lectured for the pro bono panel of the Eastern District of New York concerning Social Security disability cases from the plaintiff's perspective. He has also testified before the U.S. House of Representatives Committee on Ways and Means Social Security Subcommittee about the Social Security Disability Program.

DANIEL S. JONES, ESQ.

Daniel S. Jones serves of counsel to the law offices of Charles E. Binder and Harry J. Binder, LLP. He is a graduate of New York Law School, where he was admitted as part of the John Marshall Harlan Scholars Program. He was admitted to the New Jersey bar in 2010 and the New York State bar in February 2011. He currently practices exclusively in the area of federal court appeals of Social Security disability claims. Prior to becoming a member of the bar, Mr. Jones spent eight years working as a non-attorney representative of claimants appearing before the Social Security Administration at all levels of the administrative process. He is a member in good standing of the Eastern and Southern District Courts of New York as well as the District Court of New Jersey and the First, Second, Third, Fourth, Sixth, Eighth and Eleventh Circuit Court of Appeals. He has drafted briefs filed in all 12 Circuit Courts that hear appeals of denials from the Social Security Administration, as well as every United States District Court in all 50 states and in the District of Columbia and District of Puerto Rico. He is a member of the National Organization of Social Security Claims Representatives and the American Bar Association.